

## § 4290.1100

in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Portfolio Concern Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. At least 50 percent of any board member services fees paid to your Associate by a Portfolio Concern for board member services provided by the Associate must be allocated back to you for your benefit.

(e) *Approval required.* You must obtain the Secretary's prior written approval of any management contract that does not satisfy paragraphs (c) or (d) of this section.

(f) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed preparing an Enterprise for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options. All of the transaction services fees paid to your Associate by a Portfolio Concern for transaction services provided by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Portfolio Concern on that portion of a Financing that you do not provide.

(g) *Recordkeeping Requirements.* You must keep a record of hours spent and amounts charged to the Portfolio Concern, including expenses charged.

### Subpart J—Financial Assistance for RBICs (Leverage)

#### GENERAL INFORMATION ABOUT OBTAINING LEVERAGE

#### § 4290.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from the Secretary in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for the Secretary's conditional commitment to re-

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serve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 4290.1200 through 4290.1240.

(c) *Where to send your application.* Send all Leverage draw-down applications to Funding Control Officer, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Suite 6300, Mail Code 7050, Washington, DC 20416.

#### § 4290.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

#### § 4290.1130 Leverage fees payable by RBIC.

(a) *Leverage fee.* You must pay the Secretary a non-refundable leverage fee for each issuance of a Debenture. The fee is 3 percent of the face amount of the Debenture issued, and will be deducted from the proceeds remitted to you.

(b) *Additional charge.* You must pay the Secretary an additional annual charge of 1 percent of the outstanding amount of your Debenture.

(c) *Other Leverage fees.* The Secretary may establish a fee structure for services performed by the Central Registration Agent (CRA). The Secretary will not collect any fee for its guarantee of TCs.

#### § 4290.1140 RBIC's acceptance of remedies under § 4290.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 4290.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

#### MAXIMUM AMOUNT OF LEVERAGE FOR WHICH A RBIC IS ELIGIBLE

#### § 4290.1150 Maximum amount of Leverage for a RBIC.

The face amount of a RBIC's outstanding Debentures may not exceed the lesser of 200 percent of its Leverageable Capital or \$105,000,000.

## RBS and RUS, USDA

## § 4290.1230

### CONDITIONAL COMMITMENTS TO RESERVE LEVERAGE FOR A RBIC

#### **§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.**

(a) *General.* Under the provisions in §§ 4290.1200 through 4290.1240, you may apply for the Secretary's conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* The Secretary will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of \$5,000. The Secretary in his or her discretion may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(d) *Term of Leverage commitment.* Your Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by the Secretary. The Secretary's Leverage commitment will be included in the Participation Agreement at the time of your licensing as a RBIC, under § 4290.390.

#### **§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.**

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

### **§ 4290.1230 Draw-downs by RBIC under Leverage commitment.**

(a) *RBIC's authorization of the Secretary to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Secretary, or the Secretary's designated agent or trustee, to guarantee your Debenture and to sell it with the Secretary's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of \$5,000. The Secretary, in his or her discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws—(1) General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Secretary determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Secretary in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (*see also* § 4290.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 in accordance with § 4290.630(a), a